

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

RIVERA L. PEOPLES, )  
Petitioner, )  
v. ) Case No. 3:15-cv-00666  
JOHNNY FITZ, Warden,<sup>1</sup> ) Judge Aleta A. Trauger  
Respondent. ) Magistrate Judge Jeffrey S. Frensley

**ORDER**

Before the court is the Magistrate Judge's Report and Recommendation ("R&R") (Doc. No. 34), recommending that petitioner Rivera Peoples' Amended Petition and Supplemental Amended Petition (Doc. No. 19), seeking relief under 28 U.S.C. § 2254, be denied in its entirety and dismissed with prejudice, to which both parties have filed objections.

Also pending is petitioner Rivera Peoples' *pro se* Motion for Leave to File *Pro Se* Supplemental Objection (Doc. No. 49). That motion is **GRANTED**, and the court has taken into consideration the Supplemental Objection.

For the reasons stated in the accompanying Memorandum, however, the petitioner's Amended Objections (Doc. No. 46) (filed by counsel) and the petitioner's *pro se* Supplemental

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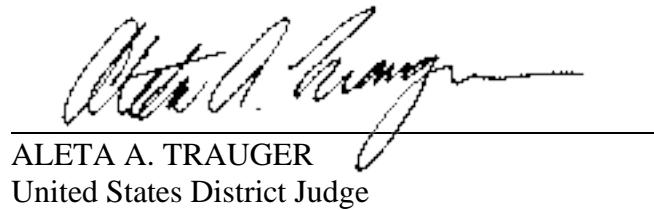
<sup>1</sup> The petitioner's recent *pro se* filing and a search of the Tennessee Department of Correction Felony Offender information website both reflect that Peoples is now incarcerated at the West Tennessee State Penitentiary. (*See* Doc. No. 49, at 2.) The proper respondent to a habeas petition is "the person who has custody over [the petitioner]." 28 U.S.C. § 2242; *see also* 28 U.S.C. § 2243. The prisoner's immediate physical custodian is the warden of the facility where the prisoner is being held. *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004) (citing *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). Accordingly, Warden Johnny Fitz is automatically substituted as the appropriate defendant in this action, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

Objection (Doc. No. 49-1) are **OVERRULED**, and the respondent's Objections are **GRANTED**, even though they make no difference to the outcome of the case. The R&R (Doc. No. 34) is **ACCEPTED**, insofar as it recommends that Peoples' Amended and Supplemental Petition (Doc. No. 19) be denied. The court also finds that the petitioner is not entitled to relief on the basis of the claims set forth in the original habeas Petition. (Doc. No. 1.) Accordingly, both petitions for relief (Doc. Nos. 1, 19) are **DENIED**, and this action is **DISMISSED**.

Further, the court **DENIES** a Certificate of Appealability ("COA"). The petitioner may, however, request a COA directly from the Sixth Circuit Court of Appeals. Fed. R. App. P. 22(b)(1).

This is a final judgment for purposes of Federal Rule of Civil Procedure 58.

It is so **ORDERED**.



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ALETA A. TRAUGER  
United States District Judge